

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,	)	
	)	NO. CR-05-0105-LRS
Respondent,	)	
	)	
-vs-	)	
	)	ORDER DENYING PETITIONER'S
RAUL S. ZAVALA,	)	RULE 59(e) MOTION
	)	
Petitioner.	)	

---

This *pro se* matter is before the Court upon Raul S. Zavala's "Motion to Alter or Amend May 10, 2012 Judgment Pursuant to Fed.R.Civ.P. Rule 59(e) (ECF No. 237-38)," filed on June 4, 2012 (ECF No. 239). Petitioner requests that the Court vacate the its May 10, 2012 judgment.<sup>1</sup> Mr. Zavala also requests that an oral argument be scheduled or "with by and through assistance of counsel." ECF no. 239 at 10. The Government did not file a Response.

## II. DISCUSSION

Rule 59(e) of the Federal Rules of Civil Procedure provides that any "motion to alter or amend a judgment must be filed no later than 28 days after entry of the judgment." Fed.R.Civ.P. 59(e). A motion under Fed.R.Civ.P. 59(e) "should not be granted, absent highly unusual

---

<sup>1</sup>Order Dismissing Motion to Vacate Judgment Pursuant to Rule 60, ECF No. 238.

1 circumstances, unless the district court is presented with newly discovered  
2 evidence, committed clear error, or if there is an intervening change in the  
3 controlling law." *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9<sup>th</sup> Cir.1999)).

4 Petitioner argues in his Rule 59(e) motion that there are (3) issues:

5 (1) "Whether the District Court Committed "Clear Error" in Construing  
6 Petitioner's F.R.Civ.P. Rule 60(b) and (d), Motion as Second or Successive  
7 Under *Gonzalez v. Crosby*, 545 U.S. 524, 532 (2005), And Title 28 U.S.C.  
§2244(b)(3)";

8 (2) "Whether the District Court Committed "Err" in "Assuming the Role  
9 of Trier of Fact" When Ruling in Petitioner's December 7, 2009, Habeas  
10 Proceeding and Then Relying on the December 7, 2009, Habeas's Defective  
Fact-Finding Process When Ruling in Petitioner's May 10, 2012, F.R.Civ.P.  
Rule 60(b); and Rule 60(d), Motion For relief From the December 7, 2009,  
Habeas Proceeding Judgment";

11 (3) "Whether the Court Erred by Failing to Construe Petitioner's Motion  
12 as a "True" Rule 60(b), and a "Mixed Motion" Requiring the District Court  
13 to Address All Issues Raised in the Rule 60(b) and Rule 60(d)  
Independently."

ECF No. 239 at 2.

14 One of the purposes of Rule 59(e) is to provide district courts the  
15 opportunity to correct significant errors of fact or law that are brought  
16 to their immediate attention, and thus spare the parties and appellate  
17 courts the burden of unnecessary appeals. *See e.g. Charles v. Daley*, 799  
18 F.2d 343, 348 (7th Cir.1986); *Steigerwald v. Bradley*, 229 F.Supp.2d 445, 447  
19 (D.MD.2002). A motion to alter or amend judgement under Rule 59(e) of the  
20 Federal Rules of Criminal Procedure is essentially a motion for  
21 reconsideration. Rule 59(e) offers an "extraordinary remedy, to be used  
22 sparingly in the interests of finality and conservation of judicial  
23 resources." *Kona Enter., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th  
24 Cir.2000). The Ninth Circuit has consistently held that a motion brought  
25 pursuant to Rule 59(e) should only be granted in "highly unusual  
26 circumstances." *Orange Street Partners v. Arnold*, 179 F.3d 656, 665 (9th

1 Cir.1999) (*citing School Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9<sup>th</sup>  
2 Cir.1993)).

3       Once a decision of law is made, it becomes the "law of the case," and  
4 absent clear error or changed circumstances should not be changed. *See*  
5 *United States v. Estrada-Lucas*, 651 F.2d 1261, 1263-64 (9th Cir.1980). The  
6 law of the case doctrine provides that "a court is generally precluded from  
7 reconsidering an issue that has already been decided by the same court, or  
8 a higher court in the identical case." *United States v. Cuddy*, 147 F.3d  
9 1111, 1114 (9th Cir.1998), *quoting United States v. Alexander*, 106 F.3d 874,  
10 876 (9th Cir.1997) (internal quotation and citation omitted).

11       In the instant motion, Mr. Zavala argues that ". . . the District Court  
12 has never addressed whether any of the allegations raised in Petitioner's  
13 Title 28 U.S.C. 2255 can be attributed to any 'strategic reasons' of  
14 counsel's actions." Petitioner also argues that the Court did not address  
15 the allegation in his §2255 motion that counsel failed<sup>2</sup> to argue for a proper  
16 Terry stop or address the alleged conflict of interest. ECF No. 239 at 8.  
17 It appears that Petitioner is requesting reconsideration, in part, of the  
18 merits of his § 2255 Motion. As to these arguments, his Rule 59(e) motion  
19 to reconsider or amend judgment is construed as a second or successive  
20 federal habeas motion under 28 U.S.C. § 2255. *Gonzalez v. Crosby*, 545 U.S.  
21 524; 125 S.Ct. 2641, 2649 (2005). This Court, however, cannot consider such  
22  
23

---

24       <sup>2</sup>The Court did address these specific issues in its Order Denying 28  
25 U.S.C. §2255, noting: Petitioner alleges many more deficiencies of his  
26 counsel, however, Petitioner fails to show that one or all of these  
errors had some conceivable effect on the outcome of the proceeding. ECF  
No. 225 at 10-11.

1 alleged claims without prior authorization of the Ninth Circuit Court of  
2 Appeals.<sup>3</sup>

3 "To succeed [in a Rule 59(e) motion], a party must set forth facts  
4 or law of a strongly convincing nature to induce the court to reverse its  
5 prior decision." *U.S. v. Westlands Water Dist.*, 134 F.Supp.2d 1111, 1131  
6 (E.D.Cal.2001). Petitioner sets forth no newly discovered evidence, does  
7 not demonstrate any error, much less clear error, has been committed, nor  
8 has an intervening change in the controlling law been demonstrated. In  
9 other words, Petitioner provides no basis for the Court to re-open this  
10 matter. Because none of the grounds for relief pursuant to Rule 59(e) is  
11 present, it is concluded that Petitioner is not entitled to relief pursuant  
12 to Rule 59(e). Accordingly,

13 **IT IS HEREBY ORDERED** that:

14 1. Petitioner's "Motion to Alter or Amend May 10, 2012 Judgment  
15 Pursuant to Fed.R.Civ.P. Rule 59(e) (ECF No. 237-38)," **ECF No. 239**, is  
16 **DENIED**.

17 2. To the extent Petitioner's motion seeks reconsideration, in part,  
18 of the merits of his § 2255 Motion claims which were considered and  
19 dismissed on December 7, 2009 (ECF No. 225), this Court cannot consider  
20 such alleged claims without prior authorization of the Ninth Circuit Court  
21 of Appeals. On June 15, 2011, the Ninth Circuit Court of Appeals denied  
22 Mr. Zavala's request for certificate of appealability (ECF No. 235).

---

23  
24 <sup>3</sup>Rules Governing Sect. 2255 Proc. for the U.S. Dist. Ct., Rule 9  
25 ("Before presenting a second or successive motion, the moving party must  
26 obtain an order from the appropriate court of appeals authorizing the  
district court to consider the motion, as required by 28 U.S.C. §  
2244(b)(3) and (4)"); *United States v. Allen*, 157 F.3d 661, 664 (9<sup>th</sup>  
Cir.1998).

**DATED** this 21st day of August, 2012.